Department of Energy Financial Assistance Regulations



FINANCIAL ASSISTANCE

No. FAL 2019-01

Date: December 10, 2018

LETTER

This Financial Assistance Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA

Subject: Implementation of Division A, Title III and Title V of the Energy

and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019, Pub. L. No. 115-244.

References:

Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriation Act, 2019, Pub. L. No. 115-244 Division A, Title III, Sections 301, 303, 304, 306 and Title V Section 501

Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245 Division C

When is this Financial Assistance Letter (FAL) effective?

The statutory provisions addressed in this FAL were effective as of October 1, 2018.

When does this FAL expire?

This FAL is in effect for FY19. This FAL and all previous FALs on appropriations will be archived after the end of the applicable FAL and a new FAL on appropriations is issued. Generally, the guidance provided in the appropriation FALs will remain in effect when obligating dollars appropriated under that applicable appropriation Act's FAL. Please request assistance from your local counsel for applicability after the end of an FY.

Who is the point of contact?

For DOE, contact Richard Bonnell of the Contract and Financial Assistance Policy Division, Office of Policy in the Office of Acquisition Management at (202) 287-1747 or at richard.bonnell@hq.doe.gov.

For NNSA, contact NNSA at (505) 845-4337.

For conference spending questions, contact Jason Taylor of the Contract and Financial Assistance Policy Division, Office of Policy in the Office of Acquisition Management at (202) 287-1560 or at jason.taylor@hq.doe.gov.

Who is the intended audience?

Department of Energy (DOE) and National Nuclear Security Administration (NNSA) Contracting Officers.

What is the purpose?

The purpose of this FAL is to provide information and guidance regarding the Department of Energy's (DOE or Department) implementation of Division A, Title III and Title V of the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019, Pub. L. No. 115-244 (P.L. 115-244) and Division C of the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No.115-245.

The government-wide provisions of the Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141) have been extended until December 7, 2018 by Division C of the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No.115-245. Please see Financial Assistance Letter 2018-04 for the implementation guidance applicable to Division E, Title VII, Sections 724, 739, 743, 744, 745 and 746 of the 2018 Act.

The Congressional Notification requirements of P.L. 115-244 will be addressed in a separate Acquisition Letter/Financial Assistance Letter.

What types of actions are affected by this FAL?

This FAL applies to all DOE and NNSA funding opportunity announcements and financial assistance actions **funded with fiscal year 2019 appropriated funds.** For funding opportunity announcements and financial assistance actions funded in whole or in part with previous fiscal year funds or other Act funds and guidance is not provided in this FAL, please refer to the corresponding FAL for appropriate

guidance. For example, if an award is made with fiscal year 2016 appropriated funds please see FAL 2016-01 for appropriate guidance.

What guidance is included in this FAL?

Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriation Act, 2019.

- I. Section 301(a) Unfunded Requests for Proposals/FOAs
- II. Section 301(c) Multiyear Award Funding for DOE—Energy Programs and Section 306 Multiyear Award Funding for DOE— Energy Programs—Science (From Section 306 of Division D of the 2016 Act)
- III. Section 306 Prohibition on Awards to the Russian Federation
- IV. Section 501 Lobbying Restrictions

NOTE: The congressional notification requirements of Section 301(b) and 301(c) will be addressed in a separate AL/FAL.

I. Section 301(a) UNFUNDED REQUESTS FOR PROPOSALS/FOAs

What is the law?

(a) No appropriation, funds, or authority made available by this title for the Department of Energy shall be used to initiate or resume any program, project, or activity or to prepare or initiate Requests For Proposals or similar arrangements (including Requests for Quotations, Requests for Information, and Funding Opportunity Announcements) for a program, project, or activity if the program, project, or activity has not been funded by Congress.

What is the scope of this requirement?

Section 301(a) of Division A of P.L. 115-244 requires that appropriations, funds, or authorities made available by P.L. 115-244 shall not be used to initiate or resume any program, project or activity or to prepare, initiate, or publicize Requests for Proposals (RFP), Requests for Information (RFI), Funding Opportunity Announcements (FOA), or similar arrangements for any program, project, or activity if the program, project, or activity has not been funded by Congress.

What procedures need to be followed to implement this requirement?

Before preparing, initiating, or publicizing RFPs, RFIs, FOAs or similar arrangements in support of a program, project, or activity, the Contracting Officer shall work with the

program office and the program budget office officials to ensure that the program, project, or activity has been funded by Congress.

II. Section 301(c) Multiyear Award Funding for DOE—Energy Programs and Section 306 Multiyear Award Funding for DOE—Energy Programs—Science (From Section 306 of Division D of the 2016 Act)

What is the law?

- (c) The Department of Energy may not, with respect to any program, project, or activity that uses budget authority made available in this title under the heading "Department of Energy—Energy Programs", enter into a multiyear contract, award a multiyear grant, or enter into a multiyear cooperative agreement unless—
 - (1) the contract, grant, or cooperative agreement is funded for the full period of performance as anticipated at the time of award; or
 - (2) the contract, grant, or cooperative agreement includes a clause conditioning the Federal Government's obligation on the availability of future year budget authority and the Secretary notifies the Committees on Appropriations of both Houses of Congress at least 3 days in advance.

The Consolidated Appropriations Act, 2016, provided that none of the funds made available under the heading "Department of Energy—Energy Programs—Science" in this <u>or any subsequent Energy and Water Development and Related Agencies appropriations Act for any fiscal year</u> may be used for a multiyear contract, grant, cooperative agreement, or Other Transaction (OT) Agreement of \$1,000,000 or less unless the contract, grant, cooperative agreement, or Other Transaction Agreement is funded for the full period of performance as anticipated at the time of award.

What is the scope of this requirement?

Section 301(c) of Division A of P.L. 115-244 requires mutltiyear contracts, grants, or cooperative agreements awarded with budget authority or funds appropriated by P.L. 115-244 under the heading "Department of Energy—Energy Programs must be funded for the full period of performance as anticipated at the time of award; or the contract, grant, or cooperative agreement include a clause conditioning the Federal Government's obligation on the availability of future year budget authority <u>and</u> the Secretary notifies the Committees on Appropriations of both Houses of Congress at least 3 days in advance.

Furthermore, Section 306 of Division D of the 2016 Act requires that multiyear contracts, grants, cooperative agreements, or Other Transaction Agreements of \$1,000,000 or less awarded with funds appropriated by the 2016 Act or any subsequent Energy and Water Development and Related Agencies appropriations Act for any fiscal year under the heading "Department of Energy—Energy Programs—Science" must be funded for the full period of performance as anticipated at the time of award.

What procedures need to be followed to implement this requirement?

Contracting and Grants Officers awarding mutltiyear contracts, grants, or cooperative agreements with budget authority or funds appropriated by P.L. 115-244 under the heading "Department of Energy—Energy Programs" must ensure that the funds for the full period of performance as anticipated at the time of award are available prior to award and obligated at award or the contract, grant, or cooperative agreement includes a clause conditioning the Federal Government's obligation on the availability of future year budget authority and the Secretary notifies the Committees on Appropriations of both Houses of Congress at least 3 days in advance of award.

Furthermore, Contracting Officers awarding multiyear contracts, grants, cooperative agreements, or Other Transaction Agreements of \$1,000,000 or less with funds appropriated by the 2016 Act or any subsequent Energy and Water Development and Related Agencies appropriations Act for any fiscal year under the heading "Department of Energy—Energy Programs—Science" must ensure that the funds for the full period of performance, as anticipated at the time of award, are available prior to award and obligated at award.

"Multiyear grant or multiyear cooperative agreement award" or "Multi-year grant or multi-year cooperative agreement award" means a **new or renewal award with a project period greater than 12 months, excluding continuation amendments**.

III. Section 306 PROHIBITION ON AWARDS TO THE RUSSIAN FEDERATION

What is the law?

- (a) None of the funds made available in this or any prior Act under the heading "Defense Nuclear Nonproliferation" may be made available to enter into new contracts with, or new agreements for Federal assistance to, the Russian Federation.
- (b) The Secretary of Energy may waive the prohibition in subsection (a) if the Secretary determines that such activity is in the national security interests of the United States. This waiver authority may not be delegated.
- (c) A waiver under subsection (b) shall not be effective until 15 days after the date on which the Secretary submits to the Committees on Appropriations of both Houses of Congress, in classified form if necessary, a report on the justification for the waiver.

What is the scope of this requirement?

Section 306 of Division A of P.L. 115-244 requires that none of the funds **made available in this or any prior Act** under the heading "Defense Nuclear Nonproliferation" be made

available to enter into new contracts with, or new agreements for Federal assistance to, the Russian Federation unless the Secretary of Energy waives the prohibition.

What procedures need to be followed to implement this requirement?

Contracting Officers <u>may not make any new awards with funds made available in this</u> <u>or any prior Act</u> under the heading "Defense Nuclear Nonproliferation" to the Russian Federation. Contracting Officers <u>may not provide any additional funding to previous</u> <u>awards made to the Russian Federation with funds made available in this or any prior Act</u> under the heading "Defense Nuclear Nonproliferation".

The Secretary of Energy may waive this prohibition if the Secretary determines that such activity is in the national security interests of the United States. This waiver authority may not be delegated. The waiver shall not be effective until 15 days after the date on which the Secretary submits to the Committees on Appropriations of both Houses of Congress, in classified form if necessary, a report on the justification for the waiver.

IV. Section 501 LOBBYING RESTRICTIONS

What is the law?

None of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913.

What is the scope of this requirement?

Section 501 of Division A of P.L. 115-244 applies to all solicitations, funding opportunity announcements (FOAs), and awards of DOE financial assistance to which funds appropriated under P.L. 115-244 are obligated.

What procedures need to be followed to implement this requirement?

Contracting Officers shall ensure that the standard provision and award term entitled "**LOBBYING RESTRICTIONS**" is incorporated into all solicitations, FOAs, and awards of financial assistance that use funds appropriated by P.L. 115-244.